

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 19036 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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SMT. SHANTABEN DEVSHANKAR PARMAR - Petitioner(s)

Versus

STATE OF GUJARAT (THROUGH THE COLLECTOR) & 3 - Respondent(s)

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Appearance :

MR PRAKASH K JANI for Petitioner(s) : 1,
MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/10/2005

ORAL JUDGMENT

1. In this petition under Article 227 of the Constitution of India, the petitioner has challenged

the legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 19.4.2005 passed in Revision Application No.TEN.BA.87 of 1997 in dismissing the same and confirming the order passed by the Deputy Collector (Land Reforms), Mehsana dated 22.11.1996 passed in Tenancy Appeal No.83 of 1996 as well as the order passed by the Mamlatdar & ALT, Mehsana dated 4.1.1996 passed in Tenancy Case No.84(C)/99 of 1990 in forfeiting the land in question to the State Government on the ground that there is breach of condition of grant.

2. The land bearing Survey No.1070 admeasuring 0-35-67 Gunthas situated at Mehsana was owned by one Patel Hiralal Parshottamdas and the same was restricted new tenure land under the provisions of the Bombay Tenancy and Agriculture Land Act, 1948 (hereinafter referred to the "Bombay Tenancy Act" for short). The said land was an agricultural land. It appears that he submitted an application with the Collector, Mehsana for selling the land in question to the petitioner for Non Agricultural use and the said application was submitted under Section-43 read

with Section-63 of the Bombay Tenancy Act. The Collector, Mehsana by order dated 13.12.1981 granted permission to said Patel Hirlal Parshottamdas to sell the land in question to the petitioner on certain conditions and the main conditions were that the petitioner to obtain an appropriate permission from the competent authority before using the same for non agricultural purpose and that the said application to be made within a period of six months and the petitioner should use the said land for non agricultural purpose within three years. In the said order, it is also specifically mentioned that if the condition is not complied with within stipulated time, then said permission under Section-43 would be treated as cancelled automatically. It appears that thereafter the petitioner purchased the said land in question by registered sale deed dated 26.3.1982. It also appears from the record that the petitioner wanted to sell the said land to one Susit Taheripark Co-op Housing Society Ltd. through its Chief Promotor Shri Abadali Taiyabali Lotiya, Mehsana, she submitted application to the Collector, Mehsana on 12.9.1985 to grant her permission to sell the land in question in

favour of the said Society. Again, the reminder was sent by the petitioner to the Collector, Mehsana on 21.1.86 and the said application came to be rejected by the Collector, Mehsana by its order dated 6.5.1986.

3. Thereafter, the petitioner submitted an application to the Collector, Mehsana for extension of time for obtaining Non-agricultural Use Permission upto 1995. It appears that thereafter and/or in between, the petitioner submitted an application to the Collector, Mehsana for grant of Non-agricultural Use Permission. Initially, the same was returned on the ground that the said application is not complete, however, on submitting necessary document the Collector, Mehsana by its order dated 14.11.94 rejected the said application for grant of Non-agricultural Use Permission by order dated 14.11.94. It is required to be noted that the said order dated 14.11.94 rejecting the application of the petitioner for grant of Non-agricultural Use Permission has become final as the same has not been challenged by the petitioner subsequently. Thereafter, the

Mamlatdar & ALT, Mehsana initiated the proceedings under Section 84(C) of the Bombay Tenancy Act and the petitioner was directed to show-cause as to why the land should not be forfeited to the State Government and why transfer in favour of the petitioner should not be treated as illegal. The said show-cause notice was dated 16.11.1995. The Mamlatdar & ALT, by order dated 4.1.96 held that the sale in favour of the petitioner on certain conditions imposed while granting permission under Section 43 of the Act and said conditions were not complied with and therefore, as per the conditions of the order, said permission is automatically cancelled and therefore, sale in favour of the petitioner is illegal and in breach of Section 43 of the Act and resultantly the Mamlatdar & ALT, Mehsana by its order dated 4.1.96 ordered forfeiture of the land in question to the State Government. Being aggrieved and dissatisfied with the order passed by the Mamlatdar & ALT, Mehsana dated 4.1.96, the petitioner preferred appeal before the Dy. Collector (Land Reforms), Mehsana being Tenancy Appeal No.83/96 and the said appeal came to be dismissed by the Dy. Collector (Land Reforms),

Mehsana by its order dated 22.11.96. Being aggrieved and dissatisfied with the order passed by the Dy. Collector (Land Reforms), Mehsana dated 22.11.96 passed in Tenancy Appeal No.83/96, the petitioner preferred revision application before the Gujarat Revenue Tribunal being Revision Application No. TEN.B.A. 87/97 and the Gujarat Revenue Tribunal by its judgment and order dated 19.4.2005 dismissed the said revision application confirming the order passed by both the authorities below. Being aggrieved and dissatisfied with the judgment and order passed by the Gujarat Revenue Tribunal dated 19.4.2005 passed in revision application No.TEN.BA.87/97, the petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India.

4. Shri P.K.Jani, learned advocate appearing on behalf of the petitioner has vehemently submitted that in view of the fact that the land in question was in agricultural zone and therefore, it was not possible for the petitioner to put up construction and/or to use the said land for any other purpose

other than agriculture and therefore, the petitioner could not get Non-agricultural Use Permission and under these circumstances, the land in question should not have been forfeited to the State Government as there is no breach of conditions of permission under Section 43 of the Bombay Tenancy Act. He has also further submitted that the permission was granted by the Collector, Mehsana on 13.12.81 and the land was purchased by the petitioner on 26.3.82 and proceedings came to be initiated by the respondent No.3 under Section 84(C) of the Act on 26.11.95 i.e after the period of almost 14 years from the date of transfer of the land, which was not permissible and the same was beyond unreasonable period and therefore, the impugned orders are against the law settled by the Hon'ble Supreme Court as well as this Court in catena of decisions by which it is held that proceedings under Section 84C) of the Bombay Tenancy Act are required to be initiated by the authorities within a reasonable time.

5. It is pertinent to note that the Gujarat Revenue

Tribunal has observed in the impugned judgment and order that the land is purchased by the petitioner for profiteering and not for her own use and therefore, this Court has granted one more additional opportunity to the petitioner to state on oath on affidavit and give an undertaking that whether the petitioner herself will be using the land in question or not, and learned advocate Shri Jani for the petitioner has fairly submitted that as the land is a very big parcel of land, it is not possible for the petitioner herself to use it alone and therefore, she is not in a position to state on affidavit and / or give an undertaking. It is required to be noted that from the very beginning the efforts on the part of the petitioner is to sell the land in question in favour the Susit Taheripark Co-op Housing Society Ltd. through its Chief Promotor Shri Abadali Taiyabali Lotiya, and the first application was submitted by the petitioner to allow her to sell said land to Shri Abadali Taiyabali Lotiya, on 12.9.1985 and the said application came to be rejected by the Collector, Mehsana on 6.5.1986. It is required to be noted that even the present special civil application

is also filed by the petitioner through her power of attorney holder and the power of attorney holder is none other but said Shri Abadali Taiyabali Lotiya to whom the petitioner wanted to sell the land in question, and therefore, it prima facie appears that the present special civil application is also fought and prosecuted by said Shri Abadali Taiyabali Lotiya, and even Gujarat Revenue Tribunal also observed this aspect in its impugned judgment and order that as such the present litigation is fought and prosecuted by none other but said Shri Abadali Taiyabali Lotiya. Under the circumstances, it is rightly observed by the Gujarat Revenue Tribunal as well as the Deputy Collector that the intention of the petitioner to purchase the land in question from the very beginning was for profiteering and not for her own use and this fact is now proved by subsequent conduct and the application submitted by the petitioner in the year 1985 to allow to sell the land in question to the aforesaid society for Non Agricultural purpose.

6. The main reason submitted by the petitioner for

not getting the non agricultural use permission within six months and non putting up the construction and / or using the land in question for non agricultural purpose within a period of three years is that the land in question was in agricultural zone and the same could not have been used by the petitioner for the purpose other than the agricultural purpose. It is required to be noted that it is not that the land was subsequently put to agricultural zone after the petitioner purchased the land in question after getting necessary permission under Section-43 of the Bombay Tenancy Act in the year 1981. At the time when the permission was sought under Section-43 of the Act in the year 1981, the land in question was very much in agricultural zone and the seller as well as the purchaser both were knowing on that day also that the land in question was in agricultural zone. In spite of aforesaid fact, the petitioner purchased the land in question and even agreed to the condition which is imposed in the order passed in the year 1981 that she would get necessary permission from the competent authority for using the said land for non agricultural use purpose

within six months and that she would use the same actually for Non Agricultural purpose within three years. If the attention of the Collector had been drawn to the fact by petitioner, the Collector might not have granted permission under Section-43 of the Act, but once the petitioner agreed to the condition which is imposed in the order passed in the year 1981, then, it is not open for the petitioner now to contend that as the same was in agricultural zone, the petitioner could not get non agricultural use permission within six months. It is required to be noted that nothing is on record even to suggest that even at any point of time the petitioner has submitted an application before the competent authority for getting the N.A.Use Permission. Under the circumstances, reasoning given by the petitioner that as the land in question was in agricultural zone, the petitioner could not get non agricultural use permission within six months, cannot be accepted. It is also required to be that for the first time the petitioner submitted an application in the year 1994 seeking non agricultural use permission and the said application also came to be rejected in the year 1994

and as stated above, the said order has become final.

7. It is also required to be noted that in earlier application the petitioner has submitted that the land in question is being used for agricultural purpose but when the petitioner was asked to show extract Village Form 7 x 12 to show that agricultural operation is being going on in the land in question, Shri Jani, learned advocate appearing on behalf of the petitioner is not in position to produce village form 7 x 12 and to show anything that even agricultural operations are going on.

8. It is also argued by Shri Jani, learned advocate appearing on behalf of the petitioner that the proceedings initiated under Section-84(C) of the Act are not maintainable and the same will not come within the scope and ambit of Section-84-C of the Bombay Tenancy Act. Firstly, it is required to be noted that such contention is never raised by the petitioner either before the first authority and even before the appellate authority and even before the revisional authority and the same is made for the

first time before this Court which is not permissible. Even otherwise, it is to be noted that in the order dated 13.12.1981 while granting permission under Section-43 of the Act, it is so specifically mentioned by the Collector that if there is breach of any of the conditions of the said order, then, said permission under Section-43 of the Bombay Tenancy Act would be treated as cancelled. Therefore, on non fulfilling of the Condition No.2 & 3 of the order dated 13.12.1981, permission under Section-43 of the Bombay Tenancy Act granted by the Collector has been cancelled. Therefore, permission so granted is to be treated cancelled and it be treated that as such there is no permission under Section-43 of the Bombay Tenancy Act, sale of the land in question in favour of the petitioner is hit by Section-43 of the Bombay Tenancy Act and if that is so then, even the proceedings would lie under Section-84-C of the Bombay Tenancy Act, therefore also, the contention on behalf of the petitioner, cannot be accepted.

9. The last contention on behalf of the petitioner is that the proceedings are initiated by the

Mamlatdar and ALT under Section-84-C of the Act after the period of 14 years of the transfer and therefore, the same is after unreasonable period and therefore, the same is not maintainable. It is required to be noted that there is no prejudice caused to the petitioner by not initiating the proceedings immediately. The petitioner has failed to show anything that as the proceeding are initiated belatedly, the same has caused any prejudice to the petitioner. It is pertinent to note that the land in question has been kept unused as fellow land the same is not used by the petitioner at all and as stated above, in the order dated 13.12.1981 while granting permission under Section-43 of the Bombay Tenancy Act, the Collector has specifically mentioned that on non fulfilling any of the conditions, the said permission under Section-43 would be treated as cancelled automatically. Under the circumstances, on completion of three years and on non putting up the construction, the permission is cancelled automatically. On the contrary, the petitioner is benefited by the same inasmuch as the petitioner is permitted to retain the land which the petitioner was

supposed to hand over to the Government immediately. Under the circumstances, the contention on behalf of the petitioner that as the proceedings are initiated after unreasonable period, the same are required to be quashed and set aside, cannot be accepted.

10. For the reasons stated above, there is no substance in the present special civil application and the same is required to be dismissed and is accordingly dismissed.

11. Rule is discharged, however, there will be no order as to costs.

[M.R.Shah, J.]

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